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1 March 1948

**MEMORANDUM FOR THE DIRECTOR OF THE
BUREAU OF THE BUDGET**

**SUBJECT: Justification of Legislative
Provisions for CIA**

Section 1. DEFINITIONS.

Definitions included in this proposed legislation are for the purpose of clarifying the meaning of certain provisions in the succeeding Sections.

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Section 2. SEAL OF OFFICE.

Statutory authority is needed to create a Seal of Office for the Agency. On several occasions, members of the Agency, in contacting prospective sources of intelligence, have been considerably embarrassed and sometimes refused, due to the absence of certain types of credentials. It appears that most often the contact wishes to see either a pass or a document of introduction bearing the Agency's seal. Statutory authority for a seal is requested, in order to avoid this embarrassment.

Experience has shown that intelligence records contain information that is required from time to time for official use either in other departments or as evidence in legal proceedings (i.e., the Marzani trial and the deportation proceedings against Karl and Stella Kleczkowski). Unless proper authentication of copies can be made, original documents would have to be produced. The law provides (28 U.S.C. 661) that copies authenticated with the seal of an Executive Department will be recognized and accepted in evidence to the same extent as the original document.

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Section 3. PROCUREMENT AUTHORITIES.

Certain procurement authorities are sought on the basis of difficulties which have been experienced in supplying the peculiar needs of an intelligence service. Certain items such as special cameras and communications equipment are secret in nature or in the use to which put, and, consequently, advertising cannot be used in their procurement.

This proposed Section would provide for exceptions to the normal requirements of advertising which have already been granted to the National Military Establishment and NACA by Public Law 413 of the 80th Congress. Inasmuch as all the authorities given in that law are not required by CIA, those sections deemed appropriate and necessary have been incorporated by reference in Section 3(a) of the proposed CIA legislation. Sections 3(b), 3(c), and 3(d) are adaptations to CIA organization of general provisions dealing with delegations of authority. They follow as closely as

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possible the original form of Public Law 413. The paragraphs of Public Law 413, which are incorporated by reference in Section 3(a), are itemized below with notes on those Sections which have not been incorporated.

Section 2(c) of Public Law 413 provides for negotiation on purchases and contracts for supplies without advertising if:

(1) There is a national emergency.

This is an authority which experience has shown is necessary for those agencies which would be first affected by a national emergency. CIA is certain to be one of the very first which would have to have recourse to this authority.

(2) The public exigency will not admit a delay. This is similar to the general exception provided for in Section 9(a) of Public Law 600, which revised Section 3709 of the Revised Statutes. It has a long history in Government procurement and its exercise is controlled by well-established principles.

(3) The aggregate amount does not exceed \$1,000.00. This raises the normal exemption of \$100.00 to \$1,000.00. The lower limitation

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problems for CIA in the past. A variety of minor items, not available through normal procurement channels, is required for support of CIA activities. The bulk of this type of procurement falls below \$1,000.00 in the aggregate but, in large part, exceeds \$100.00. There has been little indication that the advertising process used heretofore has resulted in any substantial saving to the Government, whereas the load of paper work involved in advertising and the resulting delay have definitely impaired the efficiency of CIA as a whole.

(4) For personal or professional services.

This is merely a clarification of existing authorities which have been recognized by interpretation of Revised Statute 3709 and Section 9 of Public Law 600.

(5) For service to be rendered by universities, colleges, or other educational institutions. A

great majority of such institutions are non-profit in nature, and the desired service is frequently peculiar to a single institution, or else is made desirable by proximity or other factors leading to efficiency of performance.

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This exception, therefore, is merely a recognition of what is already practically in effect throughout the Government.

(6) Supplies or services are to be procured and used outside the United States.

This provision is a recognition of the impracticality of giving extra-territorial effect to Revised Statute 3709, as amended.

(7) Omitted as a large scale medical supply program is not necessary to CIA functions.

(8) Omitted as CIA does no procurement for resale.

(9) Omitted as CIA does not deal in perishable subsistence supplies.

(10) For supplies or services for which it is impracticable to secure competition.

This again specifically states an exemption which is already in existence through interpretation.

(11) Omitted as CIA does not have research and development work as one of its primary functions.

(12) For supplies or services which should not be publicly disclosed. This is one of the more important exceptions for CIA, in view of

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the peculiar nature of some of the equipment, or the confidential purposes to which it would be put, as indicated above.

(13) Omitted since, as pointed out above, CIA is more interested in diversification than in standardization.

(14) Omitted as CIA is not particularly concerned with supplies requiring a substantial initial investment where advertising might require duplication of such an investment.

(15) For supplies where the bid prices of advertising are not reasonable or have not been independently arrived at. This too is a specific statement of a basic existing principle of Government procurement.

(16) Omitted as CIA is not concerned in keeping manufacturing facilities available against the time of an emergency.

(17) For procurement otherwise authorized by law. This is a catchall. It will be noted that the majority of the above exceptions are already recognized by law, regulations, or interpretation.

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The following additional Sections of Public Law 413 are incorporated by reference to apply to CIA:

Section 3 sets forth the rules for advertising.

Section 4 states the type of contracts that can be made.

Section 5 provides for advance payments under certain circumstances.

Section 6 authorizes remission by the Comptroller General of liquidating damages for delay on recommendation of the Agency head.

Section 10 provides for procurement by one agency for another and for joint procurement.

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Section 4. EDUCATION AND TRAINING.

The language of this section follows that of Section 573(b) and 705 of the Foreign Service Act of 1946 (Public Law 724 -- 79th Congress).

Specific authority would be needed if it were deemed appropriate to send members of the Agency to a school within the National Military Establishment, such as the National War College. In a few highly selected cases it will be of great benefit to the Government and the work of CIA in particular, if CIA is authorized to assign especially qualified personnel for courses of specialized instruction, such as the survey courses on Russia and China at Harvard, the Russian Institute at Columbia University, the International Affairs Program at Yale University, and similar programs.

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For these purposes specific authorization is needed in the law so that appropriated funds may be used.

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Section 5. TRAVEL, ALLOWANCES, AND RELATED EXPENSES.

Inasmuch as CIA is concerned with the coordination and production of foreign intelligence pertaining to the national security, there will be frequent need for overseas travel, occasional overseas assignment, and, as in the case of FBI, the establishment of overseas posts. It is felt that in these situations CIA has a problem similar to that faced by the Foreign Service and that authorities similar to those granted in the Foreign Service are necessary. Not all of the Foreign Service authorities are required and, where not appropriate, they have been omitted. (The comparable provisions of the Foreign Service Act of 1946 are indicated).

Section 5(A)(1)(a) provides for the payment of travel expenses for employees, including travel from a foreign post to the United States for statutory leave provided for in Section 5(A)(2). Without such a provision, employees would have to come home on statutory leave at their own expense. (Section 911(1) of the Foreign Service Act).

Section 5(A)(1)(b) provides for travel expenses of the employee's family to and from the post of duty and on authorized home leave. It is felt that it would be in the best interest of the Government not to burden

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the employee with the expense of his family's transportation when he is brought back on statutory leave. (Section 911(2) of the Foreign Service Act).

Section 5(A)(1)(c) provides for payment of transporting an employee's belongings with him from post to post. This is similar to the authority granted in Public Law 600, Section 7, for movement overseas but specifies the moves from post to post, and, where Public Law 600 provides for expenses on return to the United States to the place of actual residence at the time of assignment to duty outside the United States, this provision, similar to that given Foreign Service, provides on termination for expenses to the place where the employee will reside. In a career service, it is believed that this change is necessary in fairness to the individuals concerned. (Section 911(3) of the Foreign Service Act).

Section 5(A)(1)(d) is a recognition of the practical situation frequently occurring in times of emergency or troubled conditions in foreign countries which force the employee to move his official station at considerable expense for storage of his belongings, through no fault of his own, solely resulting from the performance of duties given him by the Agency. (Section 911(4) of the Foreign Service Act).

Section 5(A)(1)(e) is a recognition of the worldwide difficulty in obtaining quarters and of the expense

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to which an employee is frequently put for storage of his belongings at the same time that he is paying high prices for hotels or furnished rooms. A maximum of three months is considered reasonable. The regular overseas allowances are inadequate to reimburse such an additional expense. (Section 911(5) of the Foreign Service Act).

Section 5(A)(1)(f) is, like 5(A)(1)(d), a recognition of the burden which an employee may suffer due to dangerous conditions, arising at his official post through no fault of his own, which necessitate moving his household temporarily or permanently. (Section 911(7) of the Foreign Service Act).

Section 5(A)(2) authorizes the granting of statutory leave of absence in the United States for all United States citizen employees after two years abroad. Sub-sections (a) and (b) make him available for work during such leave and specify that the time necessary to travel between the foreign posts and the United States will not count against leave. It is felt that for CIA, as much as for the Foreign Service, it is in the national interest, as well as in the interest of good administration, to have personnel stationed abroad returned at reasonable intervals to renew their contact with American affairs and to keep in touch with families

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and friends in this country. It also would make a great contribution to the morale of the employees who look upon this work as a life career. It is felt that this provision would contribute materially to the maintenance of the American point of view among CIA personnel and to the efficacy of their activities. (Sections 931(b) and 933(b) of the Foreign Service Act).

Section 5(A)(3) provides for payment of shipping expenses for private automobiles. This expense, which does not come under the authority to pay for personal belongings and household goods, is believed justified in a career service, although it is not normally authorized for Government employees who are sent on special or short-term assignments overseas. (Section 913 of the Foreign Service Act).

Section 5(A)(4) has to do with the health of employees overseas. It permits the payment of travel expenses to the nearest adequate facilities when local medical facilities are inadequate, for the establishment of a first aid station and a nurse at a post where the number of personnel warrants such a station, payment for cost of treatment of illness or injury incurred in line of duty, and for physical examinations and payment of the cost of administering inoculations or vaccinations.

These provisions benefit the Government by ensuring the best treatment for illness and by authorizing

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establishment of a sound preventive health program for employees, who may be stationed in areas where infectious disease is endemic or epidemic, or at posts where climate or conditions impose hardship. In many such posts local medical facilities are hopelessly inadequate. Recently a CIA employee suffering from dysentery could not be cured by local doctors but was quickly treated with success at a Navy hospital 200 miles away. Under current authorities she had to pay her transportation there and back. This is but one example, typical of many. (Sections 941, 942(a) and (b), and 943 of the Foreign Service Act).

The authorities in Section 5(A) are the maximum permissible and are subject to such limiting regulations as the Director may prescribe. Such regulations will, in general, be patterned on those of the State Department.

Sub-section (B) of paragraph 5²¹ provides for allowances similar to those given to Foreign Service officers and employees but omits benefits given to the Foreign Service which are not thought applicable to CIA. One of those omitted provides for loan of furniture and household equipment owned by the Government under certain conditions, and another omitted provides for representation allowances to enable certain officers to maintain a standard of living necessary to support the prestige of the United States.

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The allowances provided for in (B) are, first, living and quarters allowances for temporary periods, pending establishment of permanent residence overseas. This again recognizes world-wide housing difficulties and permits the Agency to keep such employees and their families on travel status until they are established, rather than have them dependent on the normal cost-of-living allowances for the post concerned. The second provides for cost-of-living allowances where expenses at a post are so high as to impair the morale and efficiency of the employees and, in some cases, to make life impossible on base salary alone. There are at present several posts where the recurrent basic expenses exceed, at least in the lower grades, salary of the employee, plus normal allowances established by law and regulation. Together with these general cost-of-living allowances, there is provision for extraordinary and necessary expenses not otherwise compensated for, which expenses are frequently met in unsettled periods or in localities where local law or custom impose burdens upon newly arrived individuals. Provision is also made for the establishment of separation allowances, where conditions require wife and minor children of an employee to live in a country other than

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that to which he is assigned. This burden of supporting two establishments is incident to performance of official duty and not due to any fault or act of the employee. It should be noted that these allowances in Section 5(3) are subject to regulations set by the President. It is felt that it would be appropriate to have those regulations which the President has prescribed for the State Department extended to include CIA. (Sections 901, 901(1) & (2) of the Foreign Service Act).

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Section 6. GENERAL AUTHORITIES.

Section 6(a). Transfers between Appropriations.

This Section is believed necessary to provide for the annual financing of CIA operations without impairing security. [The amount of funds actually given to an intelligence agency would indicate clearly to an experienced observer the general size and scope of the Agency's activities. Also, any identification of the funds made available would give useful leads to places and methods best adapted to penetration of fiscal records. If penetrated, these records would reveal in detail all operations and the identities of all concerned in intelligence activities. Consequently, every precaution is taken to conceal the source and amount of funds made available to CIA.] Under the American system of annual appropriations made by Congress, after close scrutiny by the appropriation committees, no separate appropriation bill can be submitted for CIA.

[The only satisfactory substitute for a truly secret appropriation that has so far been suggested is to earmark, in various limitations of appropriations for other departments, certain sums which will be made available to CIA. Many detailed technical problems arise in the actual process of making such earmarked funds available for actual disbursement by CIA. Some appropriation

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acts contain, in themselves, limiting language on transfers to or from other departments. Normal methods of transfer require processing through a series of steps that would tend to reveal the amount and source of the transfer. Once transferred, the problem arises whether disbursements of funds are governed by limitations in the original appropriation or by authorities given to CIA.

It is felt that the proposed Section will eliminate the above-mentioned difficulties, while retaining sufficient control in the Director of the Bureau of the Budget to prevent abuse or improper supplementation of appropriations. In particular, it would greatly facilitate controls exercised by the budget and fiscal officers of CIA over disbursements and the audit by GAO of disbursements of vouchered funds, as it would divorce the funds spent by the Agency from their original appropriation acts and allow reference only to expenditure authorities contained in this act and the National Security Act of 1947.]

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Section 6(c). Assignment of Personnel.

In pursuing its mission, CIA at one time or another touches upon almost every branch of Government activity as well as some not within the scope of the Federal Government. There is a constant need for experienced officers or employees of other agencies to work directly with CIA on their specialties. Occasionally, there is an urgent need for a highly specialized technician in any one of a number of fields to perform a mission under CIA direction. The simplest method is by assignment to CIA. Previous organizations have from time to time experienced difficulty in effecting such assignments or in making reimbursement to other departments where required.

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a specific statement, the authority of CIA to pay such reimbursement might be subject to question.

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Section 6(d). Arming of Couriers.

Request is made to authorize couriers to carry firearms when engaged in the transportation of documents and materials which vitally affect the national security. A Federal statute is needed so that CIA couriers will not be subject to arrest in jurisdictions having local laws prohibiting the carrying of firearms -- such as the Sullivan Act in New York. Several instances have arisen where members of this Agency have been ordered on trips carrying Top Secret material, the loss of which would seriously impair the national security. We have been unable to allow them to carry firearms because of the absence of this statutory authority.

The Armed Services do not operate under these limitations, as they are able to send officer couriers who are authorized to carry arms. This Agency does not have the military personnel to allow the utilization of officers for this purpose.

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**Section 6(e). Rentals of Real Property and
Permanent Improvements Thereon.**

With very rare exceptions, every installation of CIA must be surrounded by precautions adequate to afford the highest security. These precautions involve such matters as bars or other protections on windows, installing vaults for Top Secret documents, or strengthening floors for adequate safes, erecting fences, installing and wiring for burglar alarms, and even actual alterations in buildings to eliminate weak points or points of observation. It is also frequently necessary to make alterations for installation of special equipment, or to facilitate efficient use of the premises.

Section 278(a) of Title 40, U. S. Code, permits no more than 25% of the first year's rental for leased property to be spent on permanent improvements. This limitation has, in the past, so limited CIA on improvements to leased facilities as to qualify the security of some installations. While certain alterations or special equipment, as necessary for special uses, may fall within exemptions to the limitations, others are questionable and have from time to time forced the use of temporary and inefficient substitutes. An exemption is, therefore, asked in cases where the Director will certify that the exemption is necessary to successful performance of the Agency's functions, or to the security of its activities.

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The same Section of Title 40, U. S. Code, contains a limitation on the amount of rental which may be paid by an agency. This limitation is stated as a maximum of 15% of the fair market value. Such a limitation is not a handicap where general facilities for which there is competition or for which several sites are available are sought

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Due to changing objectives and conditions, the purchase of property for such purposes has not so far been justified. The proposed Section, therefore, provides for an exemption from the 15% limitation in those cases where the Director shall certify that such an exception is necessary to the successful performance of the Agency's function, or to the security of its activities.

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Section 6(g). Exemptions From Provisions Requiring Publication of Personnel Data.

Exemption is sought from provisions of law (5 U.S.C. 654) which require the publication each year in the Official Register of the United States, or similar publications, of full and complete lists of all persons occupying administrative and supervisory positions in CIA, as well as their official titles, salaries and other data.

Under Section 102(d)(3) of the National Security Act of 1947 the Director of Central Intelligence is responsible for protecting intelligence sources and methods from unauthorized disclosure. It is an established fact that if it were possible to know the number of personnel or the size of the budget of an intelligence organization it would be relatively simple to ascertain its functions and the scope of its operations, particularly as the Official Register does give job titles. Therefore, for essential reasons of security, the Agency should be free of any legal requirement to publish this data in the Official Register of the United States or similar publications.

Similarly, exemption is sought from that section of the law (5 U.S.C. 947b) which provides that the Director of the Bureau of the Budget shall report quarterly

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to the Congress the Agency's personnel ceilings for the quarter. This report is also required to show the net increase or decrease in Agency personnel for the period. This proposal does not in any way alter the requirement that the Director of the Bureau of the Budget fix quarterly ceilings for CIA, but merely relieves him of the requirement to report this figure to the Congress, which report would result in the publication of such figure to the detriment of the security of the United States, as indicated above.

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Section 7. APPROPRIATIONS.

This is an effort to establish a point of reference to which the administrative and fiscal officers of CIA and other appropriate officers of the Government may look to determine what expenditures are authorized in the course of supporting the activities of the Agency. The need for this Section has been shown by experience. It arises out of the peculiar methods by which funds are made available to the Agency which prohibit a clear relation between the limitations of specific appropriations and the actual obligation and expenditure of funds. This Section, read together with Section 6(a), would clearly establish that, no matter how funds are made available to the Agency, they lose their identity as part of the original appropriation and are no longer bound by the limitations of the Section in which originally contained. They may, therefore, be expended by CIA under the provisions of Section 7(a) and also under certain other specific authorizations contained in previous Sections of this proposed legislation.

A majority of the provisions in Section 7(a)(1) are those pertaining to activities necessary to the normal administration of CIA but for which money cannot be expended without specific appropriation authorization.

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Hence, personal services includes employment of aliens which has for a period of years been permitted only on a very limited basis by specific authority contained in various appropriation acts.

Many of the provisions are routine and self-explanatory, such as return and internment of employees who die abroad in the performance of their official duties, penalty mail, health service program, travel to meetings of certain organizations, association and library dues, settlement of claims under the Tort Claims Act, and the maintenance of buildings. Others are particularly essential to CIA activities, such as rental of news reporting services, all sorts of reproduction machines, all sorts of communications equipment, and all sorts of transportation items. Security requires the Agency to do a certain amount of its own printing and binding, and the security which requires arming of couriers under Section 6(d) requires also authority to purchase and maintain firearms in this appropriation Section.

Provision is made for the acquisition of land, in view of the fact that it has been necessary to make temporary and unsatisfactory arrangements for such

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need is seen from time to time in the future to acquire small properties for training or cover purposes. Provision would be made in budgeting such items, but the money could not be spent without a basis authority to which the certifying officer could refer.

Part (b) of Section 7 is required to authorize the spending of a portion of the money made available to the Agency for confidential purposes where security would prohibit an audit. Currently, the Agency's money is made available from confidential or contingent funds, which presuppose that any expenditures therefrom may be certified to by the head of the Agency without outside audit. It may be that, in the future, funds will be available from other sources, and, in any case, as pointed out above, the intent of Section 6(a) and Section 7 is to divorce an agency's funds from their sources. Consequently, it is felt necessary to authorize specifically the expenditure of funds for confidential purposes to which the Director will certify, and his certification will be a full accounting for such expenditures.

In practice, it is felt that the Agency would draw up its overall budget, and the Director, with the advice

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of his staff, would determine what proportion could be expended as normal vouchered funds under authorities contained in the foregoing Sections. The remainder of the funds required would then be available for expenditure under Section 7(b)(X). Within this amount, he would determine that a certain proportion would be for confidential purposes, which would be accounted for solely on his certificate. These confidential funds would be available for expenditure for all purposes necessary in the conduct of confidential activities of the Agency, subject to regulations prescribed by the Director. These regulations will be based, in general, on the foregoing authorities. The proportions ascertained by the Director would have to be approved by the National Security Council before submission to the Bureau of the Budget and Congress.

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